IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLAGTE JURISDICTION

APPEAL FROM ORDER NO. 495 OF 2006.
FROM
NOTICE OF MOTION NO. 2544 OPF 2006
IN
S.C. SUIT NO. 2993 OF 2006

Edward Dinyar Maneskshaw Vajifdar .. Appellant
V/s
Kersy Limathwalla & Ors. .Respondents.

Mr. Khushru Jaiwalla a/w Hemang Ramthattha i/e RMG Law Associates. for the appellant

Mr. Cyrnes Adesher i/b Mulla & Mulla for the respondents.

CORAM : A.M. KHANWILKAR, J.

DATE : 18TH JULY, 2006.

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Heard Counsel for the parties. Perused the relevant documents and the impugned judgment on record. This appeal from order takes exception to the judgment and order passed by the Lower Court dated 30th June 2006; refusing to grant ad interim relief as prayed by the appellant/plaintiff during the pendency of notice of motion. It is true that the sole basis for declining to grant ad interim relief as noted by the Lower Court is that the appellant/applicant had approached the Court on

the last date. The Lower Court has found that the notice to replace the appellant from the post of Panthaki was displayed on 28th April, 2006, whereas the suit has been filed on 29th June, 2006.

2. The question is whether the view so recorded by the Lower court can be sustained. I have no hesitation, on going through the relevant pleadings, in particular averments made in paragraph 20 of the plaint, that no fault can be found with the said view. That is a possible view. In paragraph 20 of the plaint the plaintiff has virtually conceded the position that the notice issued on 28th April, 2006 was with a view to replace the plaintiff as Panthaki and for appointment of another priest. On going through the case made out in the plaint, it is more than clear that the plaintiff was aware of the consequences of notice dated 28th April, 2006. In my view, therefore, no fault can be found with the view of the Lower Court that it was not a case for grant of ad interim relief, as the plaintiff had approached the Court on the last day when the decision of the trustees was to be implemented on the next day i.e. 1st July, 2006.

3. Besides, it is pointed out that factually the appointment of priest has already been made by the trustees on 1st July, 2006 and the incumbent has already taken over the charge of the said office. Thus understood, it is not a case for interference.

4. Counsel for the appellant has pressed into service the decision of our High Court in **Naresh Amritlal Shah and Ors V. Kantilal Chunilal Shah and Ors, 2001 Vol. 103(10 Bom. L.R. 482.** For the reasons already noted earlier, the decision pressed into service is of no avail. The principle stated in this decision may be relevant on the merits of the contention in the notice of motion. Counsel for the appellant also relied on the decision of Our High Court in the case of **Bombay Oil Industries Ltd. and another V/s Raj Oil Mills and others, 1992 (2) Bom. C.R. 68** especially last sentence thereof to contend that mere delay cannot be the basis of non suit the plaintiff. However, the facts of the present case will have to be kept in mind particularly that some other incumbent has already taken over the charge of the office with effect from 1st July, 2006. Accordingly this appeal fails.

5. At this stage, Counsel for the appellant submits that at least the trial Court be directed to expedite the hearing of the notice of motion. There is no difficulty in accepting this request. Even the Counsel for the respondent fairly submits that such course may be adopted. Accordingly, the trial Court is directed to finally dispose of the notice of motion by the end of October, 2006. This observations is made on the basis of the assurance given by the parties through their Counsel that the pleadings in relation to the notice of motion will be completed on or before 1st August, 2006. Parties to appear before the trial Court on 3rd August, 2006 at 11 a.m. on which date the trial Court to assign appropriate date for hearing of the notice of motion.

5. It is made clear that the trial Court shall decide the notice of motion on its own merit and shall not be influenced by the observations made in this order. It is further placed on record that the respondent is disputing the claim of the plaintiff that the plaintiff was appointed as Panthaki of Agiary. That aspect will be considered in the notice of motion on its own merit.

(A.M. KHANWILKAR, J.)